

### **REMARKS**

Reconsideration of the application is respectfully requested. Claims 1, 4-6 and 9 are pending. No claims have been amended, canceled or added. The Specification has been amended for clarity. No new matter has been added as a result of the amendment.

Applicants have not dedicated or abandoned any unclaimed subject matter and moreover have not acquiesced to any rejections made by the Patent Office. Applicants reserve the right to pursue prosecution of any presently excluded claim embodiments in future continuation and/or divisional applications.

### **Objection to the Drawings**

The drawings have been objected to because certain figures show modified forms of construction in the same view. Applicants have submitted corrected (replacement) drawing sheets that address the objection. Specifically, Applicants have added letter "a", "b" and "c" to indicate the modified forms in the figures as needed.

### **Claim Rejection under 35 U.S.C. § 102**

Claims 1, 4, 6 and 9 are rejected under 35 U.S.C. § 102(e) as being anticipated by Balkus et al., U.S. Pat. No. 6,630,170 (Balkus). Applicants respond as follows:

The fact that an application has named a different inventive entity than a patent does not necessarily make that patent prior art. *Applied Materials Inc. v. Gemini Research Corp.*, 835 F.2d 279 (Fed. Cir. 1988). Therefore, when the unclaimed subject matter is applicant's own invention, applicant may overcome a prima facie case based on the patent by a showing that the disclosure is a description of applicant's own work.

Applicant Kenneth J. Balkus, Jr. has submitted a Rule 132 declaration stating that "any invention disclosed but not claimed in U.S. Patent No. 6,630,170 was derived from [his]

inventive contribution to U.S. Patent No. 6,630,170, and thus is not an invention "by another"" (declaration attached hereto). Based on the statements set forth in the declaration, the Examiner is respectfully requested to withdraw the instant rejection.

**Claim Rejection under 35 U.S.C. § 103**

Claim 5 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Balkus et al., U.S. Pat. No. 6,630,170 (Balkus). Applicants respond as follows:

As discusses previously, the Rule 132 declaration submitted by inventor Kenneth J. Balkus, Jr. states that "any invention disclosed but not claimed in U.S. Patent No. 6,630,170 was derived from [his] inventive contribution to U.S. Patent No. 6,630,170, and thus is not an invention "by another"". Additionally, the declaration further states that U.S. Patent No. 6,630,170 and the instant application (pending on or after December 2004) were, at the time the invention was made, subject to an obligation of assignment to the same person/entity i.e., Board of Regents, University of Texas System. Based on the statements set forth in the declaration, the Examiner is respectfully requested to withdraw the instant rejection.

**Double Patenting Rejection**

Claims 1, 4, 6 and 7 are rejected under on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent no. 6,630,170. Applicants have submitted a terminal disclaimer and request the withdrawal of the instant rejection.

**CONCLUSION**

In view of the above amendments and arguments, Applicant respectfully submits that the present application is in condition for allowance. A Notice to that effect is respectfully requested. Should the Examiner not agree, the Applicant respectfully asks the Examiner to contact the undersigned at 214-745-5356 (direct line) to discuss any remaining issues and accelerate the examination and allowance of this application. Authorization is granted to charge any outstanding fees due at this time for the continued prosecution of this matter to Winstead Deposit Account No. 23-2426 (Client Matter No. 13991-P017US).

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Respectfully submitted,

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